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Joint UNCTAD/IMO Intergovernmental Group
of Experts on Maritime Liens and
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Ninth session
Geneva, 2 December 1996
Item 3 of the provisional agenda

CONSIDERATION OF THE REVIEW OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

Note by the secretariats of UNCTAD and IMO

The attached document */ has been prepared for the ninth session of the Joint Intergovernmental Group of Experts.

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JIGE(IX)/2

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Introduction

The Joint Intergovernmental Group of Experts at its eighth session agreed to use the text of draft articles for a convention on arrest of ships contained in document JIGE(VIII)/2, TD/B/CN.4/GE.2/5, LEG/MLM/32 as a basis for discussion at its ninth session. To facilitate the work of the Joint Group, a comparison between the text of the provisions of the 1952 Convention on Arrest of Ships and the draft articles as contained in JIGE(VIII)/2 is provided in this document.

Draft articles for a convention on arrest of ships and the 1952 Arrest Convention compared

DRAFT ARTICLES	1952 CONVENTION
Article 1 - Definitions	**Article 1**
Article 1(1)	**Article 1(1)**
	In this Convention the following words shall have the meanings hereby assigned to them:
(1) "Maritime claim" means any claim concerning or arising out of the ownership, construction, possession, management, operation or trading of any ship, or out of a mortgage or an "hypothèque" or a registrable charge of the same nature on any ship, or out of salvage operations relating to any ship, such as any claim in respect of:	(1) "Maritime claim" means a claim arising out of one or more of the following:
(a) physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship;	(a) damage caused by any ship either in collision or otherwise;
(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;	(b) loss of life or personal injury caused by any ship or occuring in connection with the operation of any ship;
(c) salvage operations or any salvage agreement;	(c) salvage;
(d) liability to pay compensation or other remuneration in respect of the removal or attempted removal of a threat of damage, or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement;	. . . . .
(e) costs or expenses relating to the raising, removal, recovery or destruction of the wreck of the ship or its cargo;	. . . . .
(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;	(d) agreement relating to the use or hire of any ship whether by charter party or otherwise;

DRAFT ARTICLES	1952 CONVENTION
Article 1(1), continued	**Article 1(1), continued**
(g) any agreement relating to the carriage of goods or passengers in the ship, whether contained in a charter party or otherwise;	(e) agreement relating to the carriage of goods in any ship whether by charter party or otherwise;
(h) loss of or damage to or in connection with goods (including luggage) carried in the ship;	(f) loss of or damage to goods including baggage carried in any ship;
(i) general average;	(g) general average;
. . . . .	(h) bottomry;
(j) towage;	(i) towage;
(k) pilotage;	(j) pilotage;
(l) goods, materials, provisions, bunkers, equipment (including containers) or services supplied to the ship for its operation or maintenance;	(k) goods or materials wherever supplied to a ship for her operation or maintenance;
(m) construction, repair, converting or equipping of the ship;	(l) construction, repair or equipment of any ship or dock charges and dues;
(n) port, canal, and other waterway dues and pilotage dues;	. . . . .
(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;	(m) wages of masters, officers, or crew;
(p) disbursements made in respect of the ship, by or on behalf of the master, owner, demise or other charterer or agent;	(n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;	. . . . .
(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;	. . . . .

DRAFT ARTICLES	1952 CONVENTION
Article 1(1), continued	Article 1(1), continued
(s) any dispute as to ownership or possession of the ship;	(o) disputes as to the title to or ownership of any ship;
(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;	(p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
(u) a mortgage or an "hypothèque" or a registrable charge of the same nature on the ship;	(q) the mortgage or hypothecation of any ship;
(v) any dispute arising out of a contract for the sale of the ship.	. . . . .

Comment

The draft articles for a convention on arrest of ships contained in document JIGE(VIII)/2, TD/B/CN.4/GE.2/5, LEG/MLM/32, are based on the CMI Draft Revision of the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships 1952 prepared at the CMI Lisbon Conference in 1985, together with the amendments made necessary as a result of the adoption of the 1993 International Convention on Maritime Liens and Mortgages and observations/proposals made by delegations during the seventh session of the JIGE.

Article 1(1) of the draft articles corresponds to article 1(1) of the 1952 Convention. While the 1952 Convention contains an exhaustive list of maritime claims, the draft articles adopt a mixed approach of providing for a definition of the term "maritime claim" together with the general words "such as", so that while allowing some flexibility, it introduces an element of ejusdem generis with the list of maritime claims which follow. The list of maritime claims is expanded so as to cover all claims which have been granted maritime lien status under the 1993 MLM Convention and to include further claims of maritime nature. Sub-paragraphs (a), (b), (n) and (o) are based on article 4(1) of the 1993 MLM Convention. Sub-paragraphs (d), (e), (p), (q), (r) and (v) are new and they were added at the CMI Lisbon Conference so as to include other claims of maritime character. The outdated concept of "bottomry" has been deleted, and further modifications are made to ensure clarity.

During the eighth session of the JIGE an informal group was set up with the task of ensuring that all claims with maritime lien status under the 1993 MLM Convention are included in the list of maritime claims without creating duplication or conflict between sub-paragraphs of article 1(1). The Working Group did not complete its work and will continue consideration of the matter at the next session of the JIGE. The report of the Chairman of the Working Group is annexed to the report of JIGE.1/

1/. See the Report of the JIGE on its eighth session, document JIGE(VIII)/7, TD/B/CN.4/GE.2/10, LEG/MLM/37, annex II, and for discussions on article 1(1), see annex 1, paras 11-20.

DRAFT ARTICLES	1952 CONVENTION
Article 1(2)	**Article 1(2)**
(2) "Arrest" means any detention, or restriction on removal, of a ship by order of a Court to secure a maritime claim when at the time of such detention or restriction that ship is physically within the jurisdiction of the State where the order has been made. "Arrest" includes "attachment" or other conservatory measures, but does not include measures taken in execution or satisfaction of an enforceable judgement or arbitral award.	(2) "Arrest means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgement.

Comment

Article 1(2) corresponds to the same paragraph of article 1 of the 1952 Convention. The text of this paragraph, which was adopted at the CMI Lisbon Conference, clearly limits the application of the Convention to cases where the ship is physically within the jurisdiction of the State of arrest. It therefore excludes the so-called documentary arrest by entering an order on the file of the ship in the ship's register.2/ This sub-paragraph was the subject of exensive discussion by the JIGE at its eighth session, where the definition of arrest contained in article 1(2) of the 1952 Convention was preferred by the majority of delegations.3/

Article 1(3)	**Article 1(3)**
(3) "Person" includes individuals, partnerships, unincorporated associations and bodies corporate, governments, their departments and public authorities.	(3) "Person" includes individuals, partnerships and bodies corporate, Governments, their Departments, and Public Authorities.

2/. See the proceedings of the Lisbon Conference, CMI, 1985, Lisboa 11, p. 130.

3/. For discussion of the JIGE see the Report of the JIGE on its eighth session, JIGE(V111), TD/B/CN.4/GE.2/10, LEG/MLM/37, Annex, paras. 21-27.

DRAFT ARTICLES	1952 CONVENTION

Comment

Article 1(3) of the draft articles corresponds to article 1(3) of the 1952 Convention.4/

Article 1(4)	Article 1(4)
(4) "Claimant" means any person asserting a maritime claim.	(4) "Claimant" means a person who alleges that a maritime claim exists in his favour.

Comment

Article 1(4) of the draft articles corresponds to article 1(4) of the 1952 Convention, with some drafting amendments.

Article 1(5)	. . . . .
(5) "Court" means any competent judicial authority of a State.	

Comment

Article 1(5) is new and is considered as having only drafting significance.5/

Article 2 - Powers of arrest

Article 2(1)	Article 4
(1) A ship may be arrested or released from arrest only by or under the authority of a Court of the State in which the arrest is demanded or has been effected.	A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the Contracting State in which the arrest is made.

4/. For discussion on article 1(3), see the Report of the JIGE on its eighth session, ibid., para. 28.

5/. See the proceedings of the CMI Lisbon Conference, 1985, Lisboa II (hereinafter referred to as Lisboa II), p. 132.

DRAFT ARTICLES	1952 CONVENTION

Comment

Article 2(1) of the draft articles corresponds to article 4 of the 1952 Convention.

Article 2(2)	Article 2
(2) A ship may be arrested in respect of a maritime claim but in respect of no other claim.	A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, *but in respect of no other claim*; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any Governments or their Departments, Public Authorities, or Dock or Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

Comment

Article 2(2) of the draft articles reflects the concept contained in the first sentence of article 2 of the 1952 Convention.

Article 2(3)	Article 3(1)
(3) A ship may be arrested even though it is ready to sail or is sailing.	(1) Subject to the provisions of paragraph (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, *even though the ship arrested be ready to sail*; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1(1)(o), (p) or (q).

DRAFT ARTICLES | 1952 CONVENTION

Comment

Article 2(3) of the draft article is based on the provision contained in article 3(1) of the 1952 Convention.6/

Article 2(4)

(4) A ship may be arrested for the purpose of obtaining security notwithstanding that by virtue of a jurisdiction clause, arbitration clause or choice of law clause in any relevant contract the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

. . . . . .

Comment

Article 2(4) of the draft articles is new. It was adopted at the CMI Lisbon Conference.

Article 2(5)

(5) Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest is demanded or has been effected.

Article 6(2)

The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

6/. See Lisboa II, p. 132.

DRAFT ARTICLES	1952 CONVENTION

Comment

Article 2(5) of the draft articles corresponds to the second paragraph of article 6 of the 1952 Convention.7/

Article 3 - Exercise of right of arrest	**Article 3 (1), (2), (4)**
(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if: Alternative 1: [(a) the claim is secured by a maritime lien and is within any of the following categories; (i) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf, (ii) loss of life or personal injury occurring, whether on land of on water, in direct connection with the operation of the ship, (iii) reward for the salvage of the ship, (iv) port, canal, and other waterway dues and pilotage dues, (v) physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship;] or	(1) Subject to the provisions of paragraph (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1(1)(o), (p) or (q). (2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons. (4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

7/. For discussions held by the Joint Group on article 2 see the report of the JIGE on its eighth session, document JIGE(VIII)/7, annex 1, paragraphs 31-43.

DRAFT ARTICLES **1952 CONVENTION**

Alternative 2:

[(a) the claim is secured by a maritime lien;]

Alternative 3:

This alternative requires keeping the text of the paragraph 1(a) of alternative 1 together with a new sub-paragraph (b) which would read as follows:

[(b) the claim is secured by a maritime lien granted by the law of the State where the arrest is requested pursuant to the provisions of article 6 of the International Convention on Maritime Liens and Mortgages, 1993;]

(b) the claim is based upon a registered mortgage or a registered "hypotheque" or a registered charge of the same nature; or

(c) the claim is related to ownership or possession of the ship; or

(d) the claim is not covered by (a), (b) or (c) above and if:

(i) the person who owned the ship at the time when the maritime claim arose is personally liable for the claim and is owner of the ship when the arrest is effected, or

(ii) the demise charterer of the ship is personally liable for the claim and is demise charterer or owner of the ship when the arrest is effected.

(2) Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is personally liable for the maritime claim and who was, when the claim arose:

DRAFT ARTICLES **1952 CONVENTION**

Article 3, continued

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this article, the arrest of a ship which is not owned by the person allegedly liable for the claim shall be permissible only if, under the law of the State where the arrest is demanded, a judgement in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Comment

Article 3 of the draft articles reflects the provisions of paragraphs (1), (2) and (4) of the 1952 Convention.8/ Article 3(1)(a) includes three alternative texts. Alternative 1 is based on the Lisbon draft using the terminology of article 4(1) of the 1993 MLM Convention. Alternative 2 had been proposed by the delegation of the United States of America during the seventh session of the JIGE, and alternative 3 had been proposed by the Chairman of the Informal Group on consideration of national maritime liens set out during the same session. If alternative 3 is adopted, sub-paragraphs (b), (c) and (d) which follow will accordingly be reordered as (c), (d) and (e).9/

8/. See Lisboa II, pp. 134-143.

9/. For discussion on the three alternatives see the Report of the JIGE on its seventh session, document JIGE(VII)/3, TD/B/CN.4/GE.2/3, LEG/MLM/30, annex 1, para. 42. See also the Report of the JIGE on its eighth session, document JIGE(VIII)/7, TD/B/CN.4/GE.2/10, LEG/MLM/37, annex 1, paras. 44-53, for a further alternative proposed by the delegation of the United States of America.

DRAFT ARTICLES	1952 CONVENTION
Article 4 - Release from arrest (1) A ship which has been arrested shall be released when sufficient security has been furnished in a satisfactory form. (2) In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the ship. (3) Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability. (4)(a) If a ship has been arrested in a non-party State and is not released although security has been given in a State Party, that security shall be ordered released on application to the Court in the State Party save in exceptional cases where it would be unjust to do so. (b) If in a non-party State the ship is released upon satisfactory security being provided, any security given in a State Party shall be ordered released to the extent that the total amount of security given in the two States exceeds: (i) the claim for which the ship has been arrested, or (ii) the value of the ship, whichever is the lower. Such release shall, however, not be ordered unless the security given in the non-party State will actually be available to the claimant and will be freely transferable.	**Article 5** The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1(1)(o) and (p). In such cases, the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest. In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof. The request to release the ship against such security shall not be construed as an acknowledgement of liability or as a waiver of the benefit of the legal limitation of liability of the owner of the ship.

DRAFT ARTICLES	1952 CONVENTION

Article 4, continued

(5) Where pursuant to paragraph (1) of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

Comment

Article 4 of the draft articles corresponds to article 5 of the 1952 Convention.10/

10/. See Lisboa II, 1985, p. 144. For the discussion on article 4 by the Joint Group see the Report of the JIGE on its eighth session, document JIGE(VIII)/7, ibid. paras. 54-65.

DRAFT ARTICLES	1952 CONVENTION
Article 5 - Right of rearrest and multiple arrest	**Article 3(3)**
Alternative 1:	
(1) Where in any State a ship has already been arrested and released or security in respect of that ship has already been given to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:	(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant; and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.
(a) the nature or amount of the security already obtained in respect of the same claim is inadequate, provided that the aggregate amount of security may not exceed the value of the ship; or	
(b) the person who has already given the security is not, or is unlikely to be, able to fulfil some or all of his obligations[; or	
(c) the ship arrested or the security previously given was released either:	
(i) upon the application or with the consent of the claimant acting on reasonable grounds, or	
(ii) because the claimant could not by taking reasonable steps prevent the release].	
(2) Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:	
(a) the nature or amount of the security already obtained in respect of the same claim is inadequate; or	
(b) the provisions of paragraph (1)(b) or (c) of this article are applicable.	

DRAFT ARTICLES

1952 CONVENTION

Article 5, continued

(3) "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

Alternative 2:

[(1) Where in any State a ship has already been arrested and released or security in respect of that ship has already been given to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim, unless there has been fraud or material misrepresentation in connection with the release or the posting of the security.

(2) Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless the nature or the amount of the security already obtained in respect of the same claim is inadequate.

(3) "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.]

Comment

Article 5 of the draft articles corresponds to article 3(3) of the 1952 Convention. It includes two alternatives. Alternative 1 is based on the Lisbon draft and paragraph (c) is placed in brackets during the seventh session of the JIGE. Alternative 2 had been proposed by the delegations of the United States of America, Liberia and the Republic of Korea at the seventh session of the JIGE.11/

11/. For discussion on article 5 see the Report of the JIGE on its seventh session, document JIGE(VII)/3, TD/B/CN.4/GE.2/3, LEG/MLM/30, annex I, paras. 46-51.

DRAFT ARTICLES

Article 6 - Protection of owners and demise charterers of arrested ships

(1) The court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and obtained.

(2) The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or

(b) excessive security having been demanded and obtained.

(3) The liability, if any, of the claimant in accordance with paragraph (2) of this article shall be determined by application of the law of the State where the arrest was effected.

(4) If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph (2) of this article may be stayed pending that decision.

1952 CONVENTION

Article 6 (1)

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

DRAFT ARTICLES	1952 CONVENTION

Article 6, continued

(5) Where pursuant to paragraph (1) of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

Comment

Article 6 of the draft articles corresponds to the first paragraph of article 6 of the 1952 Convention.

Article 7 - Jurisdiction on the merits of the case

(1) The Courts of the State in which an arrest has been effected or security given to prevent arrest or obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the Parties validly agree or have agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

(2) Notwithstanding the provisions of paragraph (1) of this article, the Courts of the State in which an arrest has been effected, or security given to prevent arrest or obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

(3) In cases where a Court of the State where an arrest has been effected or security given to prevent arrest or obtain the release of the ship:

(a) does not have jurisdiction to determine the case upon its merits; or

Article 7

(1) The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts; or in any of the following cases namely:

(a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;

(b) if the claim arose in the country in which the arrest was made;

(c) if the claim concerns the voyage of the ship during which the arrest was made;

(d) if the claim arose out of a collision or in circumstances covered by article 13 of the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, signed at Brussels on 23 September 1910;

(e) if the claim is for salvage;

DRAFT ARTICLES

Article 7, continued

(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph (2) of this article,

such Court may, and upon request shall, order a period of time within which the claimant shall being proceedings before a competent Court or arbitral tribunal.

(4) If proceedings are not brought within the period of time ordered in accordance with paragraph (3) of this article then the ship arrested or the security given shall, upon request, be ordered released.

(5) If proceedings are brought within the period of time ordered in accordance with paragraph (3) of this article, or if proceedings before a competent Court in another State are brought in the absence of any such order, then unless such proceedings do not satisfy general requirements in respect of due process of law, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security given in order to prevent its arrest or obtain its release.

(6) Nothing contained in the provisions of paragraph (5) of this article shall restrict any further effect given to a foreign judgement or arbitral award under the law of the State where the arrest of the ship was made or security given to prevent its arrest or obtain its release.

1952 CONVENTION

Article 7, continued

(f) if the claim is upon a mortgage or hypothecation of the ship arrested.

(2) If the Court within whose jurisdiction the ship was arrested has no jurisdiction to decide upon the merits, the bail or other security given in accordance with article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgement which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.

(3) If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

(4) If, in any of the cases mentioned in the two preceding paragraphs, the action or proceedings are not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

(5) This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

Comment

Article 7 of the draft articles corresponds to article 7 of the 1952 Convention.

DRAFT ARTICLES

Article 8 - Application

(1) This Convention shall apply to any seagoing ship, whether or not that ship is flying the flag of a State Party.

(2) The Convention shall not apply to ships owned or operated by a State and used only on Government non-commercial service.

(3) Nothing in this Convention shall be construed as creating a maritime lien.

1952 CONVENTION

Article 8

(1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

(2) A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.

(3) Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this Convention any Government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

. . . . . .

Article 9

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which had seisin of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on Maritime Mortgages and Liens, if the latter is applicable.

DRAFT ARTICLES

Article 8, continued

(4) This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

(5) This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

(6) Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

(7) Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person who has his habitual residence or principal place of business in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

1952 CONVENTION

Article 2

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any Governments on their Departments, Public Authorities, or Dock or Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

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Article 8 - paragraphs 4 and 5

(4) Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

(5) When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or otherwise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal residence or principal place of business as the original claimant.

DRAFT ARTICLES	1952 CONVENTION

Comment

Article 8 of the draft articles corresponds to articles 2, 8 and 9 of the 1952 Convention. Article 8(1) is based on paragraphs (1) to (3) of article 8 of the 1952 Convention. Unlike the provisions of the 1952 Convention, and following the trends in modern maritime conventions, it provides for general application of the draft convention. Paragraph (2) is new and excludes the application of the draft convention to State-owned ships, provided they are used for non-commercial services. The terminology is based on that of article 3(2) of the 1993 MLM Convention. Paragraph (3) is based on article 9 of the 1952 Convention. The placement of this paragraph in article 8 which deals with application of the draft convention may be questioned. Paragraph (4) is based on article 2 of the 1952 Convention. Paragraphs (5) and (6) are new. The latter is to avoid conflict between conventions. Paragraph (7) is based on article 8 paragraphs (4) and (5) of the 1952 Convention.

Article 9 - Reservations	**Article 8(1)**
A State may, when signing, ratifying, accepting or acceding to this Convention, reserve the right to refrain from applying the Convention to ships not flying the flag of a State Party.	(1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

Comment

Article 9 of the draft articles corresponds to paragraph (1) of article 8 of the 1952 Convention.